

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

	X
McCORMICK & CO., INC.	:
	:
Plaintiff,	:
	:
v.	:
	:
KARI-OUT CLUB, LLC	:
t/a KARI-OUT CO.	:
	:
Defendant.	:
	X
PERK UP, INC., s/h/a KARI-OUT CLUB, LLC,	:
t/a KARI-OUT CO.,	:
	:
Third Party Plaintiff,	:
	:
v.	:
	:
SHAMBAUGH & SON, LP,	:
	:
Third Party Defendant.	:
	X

**PLAINTIFF'S RESPONSE TO
THIRD PARTY DEFENDANT'S
MOTION TO STAY
DISCOVERY****PLAINTIFF'S RESPONSE TO THIRD PARTY DEFENDANT'S
MOTION TO STAY DISCOVERY**

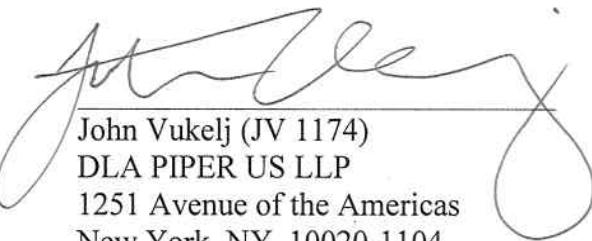
In its Motion to Dismiss the Third Party Complaint filed on January 28, 2008, Third Party Defendant Shambaugh & Son, LP ("Shambaugh") requests that the Court stay discovery "pending the Court's decision on this motion" (p. 20). While Plaintiff McCormick & Co., Inc. ("McCormick") takes no position on the merits of Shambaugh's Motion to Dismiss, McCormick opposes any request to stay discovery indefinitely, as apparently proposed by Shambaugh.

This action was filed more than six months ago. The Initial Case Management Conference was originally scheduled for December 7, 2007 but was adjourned to February 22, 2008 as a result of the filing of the Third Party Complaint. McCormick and Defendant Perk Up, Inc. t/a Kari-Out Co. ("Kari-Out") have exchanged documents, and McCormick noticed the

deposition of Kari-Out, initially for February 19, 2008, and then, by agreement with Kari-Out's counsel, that was moved to February 26, 2008. McCormick was advised by Third Party Defendant Shambaugh's counsel that Shambaugh would not object to the deposition going forward if it were not required to attend and if Kari-Out agreed to produce its witness again in the event that Shambaugh's Motion to Dismiss were denied. Kari-Out has refused to agree to that arrangement.

McCormick is mindful that there could be efficiencies in staying deposition discovery until after the pending Motion to Dismiss is decided. However, McCormick also submits that, in the interests of moving this case forward at a reasonable pace, it would be best, in the event of a stay of discovery, for the Court to reset the remaining dates in the Scheduling Order while the parties are together for the Initial Case Management Conference on February 22, 2008. McCormick looks forward to addressing the discovery schedule with the Court and all parties at that time.

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February 19, 2008



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